

THE PARTIES

3. Plaintiff Blank Rome is a law firm with offices in Delaware, Florida, Hong Kong, New Jersey, New York, Ohio, Pennsylvania, and Washington D.C.

4. Defendant United States Department of Energy is a Department of the Executive Branch of the United States government. Defendant is an “agency” within the meaning of 5 U.S.C. § 552(f), comprised of component agencies, including the National Nuclear Security Administration.

5. The National Nuclear Security Administration is an “agency” within the meaning of 5 U.S.C. § 552(f).

Plaintiff's FOIA Request and Defendant's Response

6. By letter to Defendant dated September 26, 2008, Blank Rome requested seven categories of documents under the FOIA (the “Request”). Specifically, the Request sought copies of the following:

- a. Prime Contract No. DE-AC52-04NA25282 (“Prime Contract”);
- b. Any and all amendments, attachments, schedules, or exhibits to the Prime Contract;
- c. Any and all modifications or changes to the Prime Contract;
- d. Any and all modifications or changes to the funding of the Prime Contract;
- e. Any and all Task Orders issued under the Prime Contract;
- f. Any and all amendments, attachments, schedules, or exhibits to the Task Orders, if any, and any and all Task Order Values;
- g. Any and all modifications or changes to Task Orders or Task Order Values issued under the Prime Contract, along with any and all amendments, attachments, schedules, or exhibits to these modification changes.

7. A copy of the Request is attached as Exhibit A and incorporated by reference herein.

8. The Request was sent via e-mail and first class U.S. Mail to the Freedom of Information Act Officer at the National Nuclear Security Administration by Jimmy R. Howell, Esq., of Blank Rome.

9. The Request was assigned tracking code: NNSA Control No. 08-287-H.

10. Upon information and belief, copies of the requested documents referenced in Exhibit A are in the custody or control of the National Nuclear Security Administration.

11. By letter dated October 9, 2008, Blank Rome received a response from Defendant acknowledging receipt of the Request dated September 26, 2008.

12. Defendant stated subsequently that it required an extension of the response deadline established by the FOIA and Defendant's FOIA regulations.

13. In Defendant's explanation that an extension was required, there was no articulation of any unusual circumstances that would justify the extension, as required by Defendant's FOIA regulations. *See* 10 C.F.R. § 1004.5(d)(2).

14. On December 3, 2008, Blank Rome contacted Defendant via e-mail to determine whether and when a response would be forthcoming.

15. Defendant responded on December 4, 2008, stating that it would require additional time.

16. As with the first extension, the December 4, 2008 response lacked any articulation of the unusual circumstances that would justify the extension under Defendant's FOIA regulations as set forth in 10 C.F.R. § 1004.5(d)(2).

17. On January 9, 2009, Blank Rome again contacted Defendant via e-mail to determine whether and when it would receive a response to the Request.

18. Defendant responded simply that the case was "open and being worked." A copy of this message is attached as Exhibit B.

19. On January 29, 2009, Blank Rome submitted electronically and in hard copy an appeal with the Department of Energy's Office of Hearings and Appeals on the grounds that Defendant's lack of production constituted a constructive denial of the Request.

20. By letter dated February 3, 2009, the Office of Hearings and Appeals dismissed the appeal. The dismissal stated that Blank Rome had exhausted its administrative remedies. A copy of this decision is attached as Exhibit C.

21. This decision of the Office of Hearings and Appeals was assigned Case No. TFA-0294.

22. As of the date of this Complaint, Defendant has produced no documents per the Request nor has it issued a determination as to whether the Request has been denied.

23. Accordingly, Blank Rome has exhausted the applicable administrative remedies with respect to its Request.

CAUSE OF ACTION

Violation of the Freedom of Information Act for Wrongfully Withholding Agency Records

24. Blank Rome repeats and re-alleges the allegations set forth in paragraphs 1 through 19 of this Complaint.

25. Defendant has wrongfully withheld agency records requested by Blank Rome, violating both the FOIA and Defendant's own regulations.

26. Blank Rome has exhausted the applicable administrative remedies with respect to seeking the requested records.

27. Blank Rome is entitled to injunctive relief with respect to the release and disclosure of the requested documents.

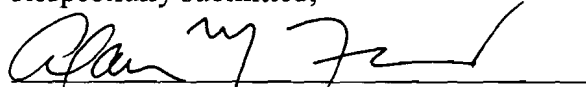
PRAYER FOR RELIEF

WHEREFORE, Blank Rome requests that this Court:

- A. Order Defendant to disclose the requested records in their entireties and make copies available to Blank Rome;
- B. Enjoin Defendant from withholding and/or redacting the Records;
- C. Provide for expeditious proceedings in this action;
- D. Assess against Defendant the reasonable attorney fees and other litigation costs reasonably incurred by Blank Rome in this case; and
- E. Grant Blank Rome all other relief as the Court may deem just and proper.

DATED: 2/18/2009

Respectfully submitted,



Alan M. Freeman (D.C. Bar No. 454693)

Blank Rome LLP

The Watergate, Twelfth Floor

600 New Hampshire Avenue, NW

Washington D.C. 20037

Telephone: 202.772.5800

Facsimile: 202.572.8374

Email: Freeman@blankrome.com

Attorney for Plaintiff

Blank Rome, LLP

EXHIBIT A



Phone: (202) 772-5827
Fax: (202) 572-8397
Email: Howell@BlankRome.com

September 26, 2008

VIA E-MAIL AND FIRST CLASS U.S. MAIL

Ms. Carolyn A. Becknell
Freedom of Information Act Office
NNSA Service Center
Office of Public Affairs
P.O. Box 5400
Albuquerque, NM 87185-5400

***Re: Freedom of Information Act Request Pertaining to DOE Contract No.
DE-AC52-04NA25282***

Dear Ms. Becknell:

Under the Freedom of Information Act, 5 U.S.C. § 552, we request documents concerning subcontracts and task orders issued under a prime contract with the Department of Energy. Specifically, the prime contract number is DE-AC52-04NA25282. At the time of award, the name and address of the prime contractor was as follows:

AHTNA Government Services Corporation
1115 Shore Street
West Sacramento, CA 95691-3508

Pursuant to the FOIA, we request copies of the following documents:

- 1) Prime Contract No. DE-AC52-04NA25282 ("Prime Contract");
- 2) Any and all amendments, attachments, schedules, or exhibits to the Prime Contract;
- 3) Any and all modifications or changes to the Prime Contract;
- 4) Any and all modifications or changes to the funding of the Prime Contract;
- 5) Any and all Task Orders issued under the Prime Contract;
- 6) Any and all amendments, attachments, schedules, or exhibits to the Task Orders, if any, and any and all Task Order Values;

Watergate 600 New Hampshire Avenue NW Washington, DC 20037
www.BlankRome.com



Septemeber 26, 2008

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- 7) Any and all modifications or changes to Task Orders or Task Order Values issued under the Prime Contract, along with any and all amendments, attachments, schedules, or exhibits to these modification changes.

For the purposes of this request, the term "document" shall mean and include, unless otherwise indicated, the original copies of any written, typed, printed, photocopied, electronic, photographic or tape recorded matter of any kind, no matter how produced, recorded, stored, or reproduced.

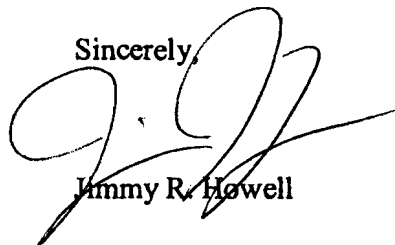
This is a commercial request and in compliance with applicable regulations, and to expedite the processing of this request, I agree to pay reasonable charges up to \$500 incurred for search, review, and copying costs. If at any time you believe the total costs will exceed \$500, please let me know.

In the event that the documents requested are not disclosable in their entirety, I request pursuant to 10 C.F.R. § 1004.10(c) that you make available and/or release all segregable, non-exempt portions of the documents and all parts of the documents that can be rendered disclosable by redaction. In the event that you determine that any portion of any requested document is exempt from disclosure, please furnish an index stating with specificity the legal and factual basis for the withholding.

Please provide your response within the applicable twenty working day period. Should you have any questions regarding this request, please do not hesitate to contact me.

Thank you in advance for your assistance and please do not hesitate to call me if you have any questions.

Sincerely,



Jimmy R. Howell

cc: Brian Bannon, Esq.

EXHIBIT B

Howell Jr., Jimmy R.

From: Hamblen, Christina H. [CHamblen@doeal.gov]
Sent: Friday, January 09, 2009 3:22 PM
To: Howell Jr., Jimmy R.
Subject: RE: FOIA 08-287-H -- Acknowledgement of FOIA request

Good afternoon Jimmy.

Your case is still open and being worked.

Regards,
Christina

Christina H. Hamblen
Information Programs Specialist
Office of Public Affairs
Phone: (505) 845-4765
Fax: (505) 284-7205

 **SAVE PAPER** - Please do not print this e-mail unless absolutely necessary

From: Howell Jr., Jimmy R. [mailto:Howell@BlankRome.com]
Sent: Friday, January 09, 2009 11:05 AM
To: Hamblen, Christina H.
Cc: Bannon, Brian
Subject: RE: FOIA 08-287-H -- Acknowledgement of FOIA request

Christina,

I just left you a voicemail to discuss the status of my FOIA request for which the tracking number is 08-287-H. My records show that an extension was made to the date of the FOIA response, but no information has been forthcoming as a result of the request, which was submitted in early October.

If we cannot obtain a response from your office, we will move forward with an appeal as a result of a constructive denial. Please contact me to let me know the status of my request.

Sincerely,

Jimmy R. Howell Jr. | Blank Rome LLP
Watergate 600 New Hampshire Avenue, NW | Washington, DC 20037
Phone: 202.772.5827 | Fax: 202.572.8397 | Email: Howell@BlankRome.com

From: Howell Jr., Jimmy R.
Sent: Thursday, December 04, 2008 4:18 PM
To: 'Hamblen, Christina H.'
Cc: Bannon, Brian
Subject: RE: FOIA 08-287-H -- Acknowledgement of FOIA request

Ms. Hamblen,

Thank you for your response. The deadline for the Department of Energy's response has long passed. While I

1/29/2009

understand that the process is lengthy, in light of the long delay and the extension request, can you please provide a date certain by which we can expect to receive a response? Please advise.

Jimmy R. Howell Jr. | Blank Rome LLP
Watergate 600 New Hampshire Avenue, NW | Washington, DC 20037
Phone: 202.772.5827 | Fax: 202.572.8397 | Email: Howell@BlankRome.com

From: Hamblen, Christina H. [mailto:CHamblen@doeal.gov]
Sent: Thursday, December 04, 2008 3:39 PM
To: Howell Jr., Jimmy R.
Subject: RE: FOIA 08-287-H -- Acknowledgement of FOIA request

Good Afternoon Mr. Howell,

The office working on your request has asked for another extension. Once I receive the response from them, I will review it and consult with Classification and Legal departments, draft a final response to you, have our FOIA Officer sign, then mail you the final.

Chris

Christina H. Hamblen
Information Programs Specialist
Office of Public Affairs
Phone: (505) 845-4765
Fax: (505) 284-7205



SAVE PAPER - Please do not print this e-mail unless absolutely necessary

From: Howell Jr., Jimmy R. [mailto:Howell@BlankRome.com]
Sent: Wednesday, December 03, 2008 3:37 PM
To: Hamblen, Christina H.
Cc: Bannon, Brian
Subject: RE: FOIA 08-287-H -- Acknowledgement of FOIA request

Hi Christina,

I wanted to check on the status of the FOIA request referenced below. We spoke a while ago and you mentioned that the responsive records would have been retrieved by November 24th. I was wondering if you could please provide me with a status update as to when I might expect to receive a response?

Sincerely,

Jimmy R. Howell Jr. | Blank Rome LLP
Watergate 600 New Hampshire Avenue, NW | Washington, DC 20037
Phone: 202.772.5827 | Fax: 202.572.8397 | Email: Howell@BlankRome.com

From: Hamblen, Christina H. [mailto:CHamblen@doeal.gov]
Sent: Thursday, October 09, 2008 11:33 AM
To: Howell Jr., Jimmy R.
Subject: FOIA 08-287-H -- Acknowledgement of FOIA request

1/29/2009

Good afternoon Mr. Howell,

I forwarded your request to my point of contact today to search for any responsive records. Please feel free to contact me with any questions.

Regards,
Chris

Christina H. Hamblen
Information Programs Specialist
Office of Public Affairs
Phone: (505) 845-4765
Fax: (505) 284-7205



SAVE PAPER - Please do not print this e-mail unless absolutely necessary

1/29/2009

EXHIBIT C



Department of Energy
Washington, DC 20585

FEB - 3 2009

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Jimmy R. Howell, Jr.
Blank Rome LLP
11th Floor
600 New Hampshire Ave., N.W.
Washington, DC 20037

Re: Case No. TFA-0294
NNSA Control No. 08-287-H

Dear Mr. Howell:

On January 30, 2009, the Office of Hearings and Appeals (OHA) of the Department of Energy (DOE) received the appeal you filed under the Freedom of Information Act (FOIA). After careful review of your submission, I have determined that your appeal should be dismissed. The reasons for my decision are set forth below.

In your appeal, you explain that you filed a request for documents on September 26, 2008, with the National Nuclear Security Administration (NNSA) Service Center in Albuquerque, New Mexico. Since that date, you have communicated a number of times with staff members of the FOIA office at the Service Center regarding its response to your request. As of the date of the appeal you filed with this Office, you have received neither the documents you requested nor an initial agency determination regarding those documents. You ask that this Office order the immediate production of the documents you have requested.

The DOE FOIA regulations state that OHA has jurisdiction to consider FOIA appeals when "the Authorizing Official has denied a request for records in whole or in part or has responded that there are no documents responsive to the request. . . ." 10 C.F.R. § 1004.8(a). Because the NNSA Service Center has not yet issued its determination, it has not denied your request for records. We therefore dismiss your appeal because it is not yet ripe for review by this Office.

When, as in this case, an agency fails to respond to a FOIA request within the 20-day deadline established in the statute, the requester is deemed to have exhausted his administrative remedies. 5 U.S.C. § 552(a)(6)(C)(i). Consequently, Blank Rome LLP may file suit in the district court of the United States in which it has its principal place of business, or in which the agency records are situated, or in the District of Columbia. 5 U.S.C. § 522(a)(4)(B).

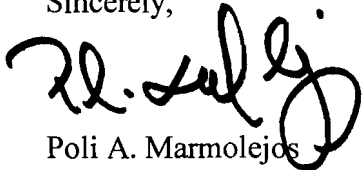
William Schwartz, the staff attorney assigned to your case, conferred with Christina Hamblen of the NNSA Service Center concerning the status of your pending request with her office. Ms. Hamblen informed Mr. Schwartz that the FOIA office at the Service Center is processing your request at this time. She has assured Mr. Schwartz that her office will provide you with a final



determination letter when it completes its review of the documents it has identified as responsive to your request. If you are not satisfied with the response the NNSA Service Center provides, you may appeal its final determination to this Office.

If you have any questions about this letter, please call or e-mail William M. Schwartz, OHA Staff Attorney, at (202) 287-1522 or william.schwartz@hq.doe.gov.

Sincerely,

A handwritten signature in black ink, appearing to read "Poli A. Marmolejos", written over the printed name.

Poli A. Marmolejos
Director
Office of Hearings and Appeals

cc: Verlette Gatlin, Deputy Director
FOI and Privacy Group